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CONFERENCE OF THE PARTIES

Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (CETS No. 198)

Follow-up analysis of the Thematic Monitoring Review of the Conference of the Parties to CETS No.198 on Article 11 ("Previous Decisions) and Article 25 §2 - 3 ("Confiscated Property") [1]

[1] Adopted by the Conference of the Parties to CETS No. 198 at their 14th meeting, Strasbourg, 15-16 November 2022.

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Introduction

1. The Conference of the Parties (hereinafter: "the COP"), at its 9th meeting held in Strasbourg from 21 to 22 November 2017, decided to initiate the application of a horizontal thematic monitoring mechanism for an initial period of two years. The 11th meeting of the COP (held in October 2019) decided to prolong the application of a horizontal monitoring for the next five years (i.e., until 2024). Such review looks at the manner in which all States Parties implement selected provisions of the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (CETS no. 198, hereinafter: "the Warsaw Convention"). To that effect, the COP adopted a new Rule 19bis of the Rules of Procedures.
2. Further to this, the COP amended its Rules of Procedure with regard to the application of the follow-up process. To that end, Rule 19bis(20) states that '*the Conference may decide that those Parties whose implementation of a certain provision of the Convention was not considered satisfactory report back on progress made within three years' time at the latest, taking into account the nature of the recommendations rendered in the thematic monitoring reports. State Parties which declared not to apply the Articles selected to be assessed through the thematic monitoring shall be exempted from the follow – up process on these Articles*.' Consequently, at its 13th meeting the COP decided to launch a follow up process on Thematic Monitoring Report on Article 11 and Article 25(2) and 25(3) of the Convention. Selection of the States Parties which undergo the follow up process was suggested by the Secretariat in cooperation with the Rapporteurs and in consultation with the Bureau. This document, discussed and adopted by the 13th plenary, is annexed to this report. Consequently, a questionnaire was circulated among selected States Parties. The responses thereto were analysed by the Secretariat.
3. For Article 11 the following States Parties were invited to present the progress made: Azerbaijan, Montenegro, Russian Federation, Serbia, Türkiye and the United Kingdom. For Article 25 (2&3), the States Parties undergoing the follow up procedure are: Armenia, Azerbaijan, Belgium, Croatia, Montenegro, the Netherlands, Poland, San Marino, Serbia and North Macedonia.

Methodology

4. The thematic monitoring report on Article 11 established the extent to which international recidivism is taken into account by the Parties. There are several possibilities to comply with the provision of Article 11, such as by providing for a harsher sanction in case of previous convictions by both domestic and foreign courts, or by providing that courts and prosecutors take previous convictions into account by assessing the offenders' past circumstances when setting a sentence[2]. It was also emphasised that Article 11 does not enforce a positive obligation on courts or prosecution services to inquire whether persons being prosecuted have received final convictions from the courts of another State Party.
5. The report on Article 25(2 and 3) established the extent to which asset sharing, for the purposes of victim compensation and return of property to the legitimate owner, as well as the possibility to negotiate relevant asset sharing agreements between different States Parties, are taken into account by the Parties. More precisely, Article 25(2) requires States Parties to

[2] Note that the drafters of the Warsaw Convention in the explanatory report consider that merely "assessing the offenders' past circumstances when setting a sentence" would possibly be too vague or ambiguous.

have in place any kind of measure to oblige the competent authorities, to consider, as a matter of priority, returning the confiscated property to the legitimate owner or to compensate the victim(s) of crime. Moreover, it was noted that, according to Article 25(3), States Parties are not required, but encouraged to give special consideration to concluding arrangements or agreements on asset sharing, and preferably on a solid, long-term basis as the sharing of confiscated property usually concerns significant funds. Effective implementation of Article 25(2 and 3) was assessed through a combination of factors, such as the transposition of the provision into the respective legislative framework, and through submitted case studies and related statistics.

6. Both reports contain a number of general recommendations following the summary findings, as well as country-specific recommendations following the individual state's analyses. States Parties were strongly encouraged to consider implementing both the general and the country-specific recommendations, by adopting legislative and non-legislative measures.

7. This follow-up report analyses the measures adopted by States Parties since the adoption of these two thematic monitoring reports. In other words, the follow-up reports aims at assessing to what extent selected countries implemented recommended actions as set forth in the thematic monitoring reports. This analysis, however, does not assess the implementation of 'soft recommendations' which aim at better implementation of the articles concerned (e.g. maintaining statistics), or enhanced application of the provisions concerned (by e.g. providing for aggravating circumstances in law in case of previous decisions). The period under review is from October 2018 (adoption of the reports).

8. It needs to be noted that both reports were subject to a follow-up carried out a year after their adoption (i.e. 2019). The then follow-up report concluded that little progress had been made to implement the recommended actions with regard to both articles. Whereas for Article 11 progress was noted with regard to six States Parties, improvements with regard to Article 25 were noted mostly in relation to a supranational jurisdiction - at the EU level, measures which are in line with the provision of Article 25(2), have meantime been adopted. In particular, EU Regulation 2018/1805 of the European Parliament and of the Council of 14 November 2018 on the mutual recognition of freezing orders and confiscation orders stipulates in the preamble that "*where the executing authority is informed of a decision issued by the issuing authority or by another competent authority in the issuing State to restitute frozen property to the victim, the executing authority should take the necessary measures to ensure that the property concerned is frozen and restituted to the victim as soon as possible*." This provision, which is binding upon all EU Member States, applies from 19 December 2020 onwards. As a result, it can be assumed that all COP States Parties which are EU Member States comply with the provision set forth in Article 25(2) with regard to other EU Member States. However, implementation of the above-referred EU Regulation does not entail that the measures it foresees are applied to COP States Parties which are not EU Member States.

Article 11

9. The following general recommendations with regard to implementation of Article 11 were made in the 2018 report:

"With the aim to promote a harmonised notion of recidivism at the international level, States Parties are recommended, if they have not yet done so, with regard to Article 11, to:

- *Amend their laws with an express reference made to the concept of international recidivism, handing the competence to their criminal courts and prosecutor's offices to take into account previous decisions handed down by another State Party;*
- *Extend the possibility of taking into account the decisions by criminal courts to all States Parties, as required by Article 11;*

For the purposes of more effective results of the use of Article 11, States Parties are invited to consider, with regard to Article 11, to:

- *If appropriate and practicable, maintain statistics on the application of Article 11 by judges and prosecution services.*

States Parties, in particular those which did not provide case examples on the practical implementation of Article 11, are recommended to continue to familiarise judges, prosecution services and other competent authorities with the concept of international recidivism and the related domestic provisions."

10. The country specific analysis, which is provided below, aimed at assessing any progress made by the countries since 2018. Findings of the previous follow-up report were taken into account, however, the main source of information were the responses to the follow-up questionnaire provided by the States Parties.

Azerbaijan

11. The follow up report of 2019 noted progress with regard to application of Article 11 in Azerbaijan – the Constitutional Court of Azerbaijan had decided on a relevant question on interpretation of the norm which provided for the possibility of the courts of Azerbaijan to take into account the conviction put forward by a court of foreign state(s). The Constitutional Court decided that courts in Azerbaijan shall take into account the conviction achieved in a foreign jurisdiction if such possibility is provided under international treaties to which Azerbaijan is a party to. Consequently, this principle would include international recidivism as foreseen by the Warsaw Convention. The Constitutional Court further recommended the National Assembly of Azerbaijan to amend the Criminal Code and the Criminal Procedure Code to improve the procedures for the recognition and consideration of foreign court decisions under international treaties to which Azerbaijan is a party to. This reform is still underway. Consequently, it could be concluded that progress has been made by Azerbaijan to meet the requirements of Article 11. Authorities are invited to continue with the reforms as suggested by the Constitutional Court and amend the relevant legislation accordingly.

Montenegro

12. In their responses to the follow-up questionnaire, Montenegrin authorities reiterated their argumentation which they put forward for the purposes of 2018 thematic monitoring review, stating that Article 42 of the Criminal Code obliges courts to take into consideration any previous decision when determining the sentence of the offender. No further explicit notion of international recidivism in domestic legislation has been made. Consequently, no progress since the adoption of the thematic monitoring report was noted.

Russian Federation

13. The Russian Federation has undergone a 'selected follow up procedure' in 2021 and the report on Article 11 was then amended. With regard to the implementation of recommended actions the report states that there is still a need to introduce a specific notion of international

recidivism into domestic legislation. No progress towards implementing this recommendation was made since November 2021.

Serbia

14. Further to the adoption of the thematic horizontal review on Article 11 (2018), the authorities have not adopted any legislative or other measures to introduce the principle of international recidivism expressly in domestic legislation.

Türkiye

15. In their responses to the follow-up questionnaire, the authorities reiterated their view that the Turkish legislation sufficiently complies with Article 11, as a number of predicate offences to ML are included in the scope of the Turkish domestic legislation on recidivism. However, no legislative or other measures have been adopted to ensure that all predicate offences to ML would be subject to recidivism. On the other hand, two cases were presented with some elements of recidivism. However, the content of these cases does not appear to be relevant for application of Article 11 of the Warsaw Convention. Consequently, it could be concluded that no progress since the adoption of the thematic monitoring report was noted.

United Kingdom

16. The United Kingdom reported on several developments with regard to application of Art.11. In England and Wales, the Sentencing Act came into force in December 2020. The authorities advised that this Act created the Sentencing Code (parts 2-13 of the 2020 Act), which brings together the legislative provisions which courts refer to when sentencing offenders. It did not create new sentencing law, but rather consolidated and brought together existing law. Section 59(1) of the Sentencing Code requires that the court, when sentencing an offender, must follow any relevant sentencing guidelines unless satisfied that it would be contrary to the interests of justice to do so. The sentencing guidelines are produced by the independent Sentencing Council, which issued a "General guideline: overarching principles". Step 2 of the "General guideline: overarching principles" set out the impact of aggravating factors (and mitigating factors) on provisional sentences that may make the offence more serious, including whether the impact these should have on a sentence (e.g. higher in the case of aggravating factors) and the weight to be assigned to them. The "General guideline: overarching principles" makes that relevant previous convictions must be regarded as an aggravating factor in line with section 65 of the Sentencing Code. Whilst Section 65 states that the court must take into account previous United Kingdom convictions, it does not preclude the court from taking into account convictions from overseas jurisdictions. The court retains the discretion to take account of previous convictions from other jurisdictions. The General guideline: overarching principles also states that "*the primary significance of previous convictions (including convictions in other jurisdictions) is the extent to which they indicate trends in offending behaviour and possibly the offender's response to earlier sentences*".

17. The authorities also advised that the Criminal Procedure Rules from 2020 codify what has been the practice and expectation in criminal courts for many years – that available information about previous convictions in any jurisdiction, not only the United Kingdom, should be presented to the court (Rule 25.16(3)). A defendant's previous offending history, if available, is also required to be provided to the courts with the initial information about the case (Rule 8.3).
18. Similarly to England and Wales, in Northern Ireland the courts retain the discretion to take into account previous convictions from overseas jurisdictions (Article 37(1) of the Criminal Justice

(NI) Order 1996; The Northern Ireland Sentencing Guidelines; the Criminal Justice (Evidence) (Northern Ireland) Order 2004). The courts in Scotland retain the same discretion based on the provisions of Criminal Procedure (Scotland) Act (Section 69(2) and 101(7)); and Sentencing Council guideline (paragraph 21).

19. Consequently, the United Kingdom courts have a possibility to take into account previous convictions imposed outside of the United Kingdom as an aggravating factor during sentencing. Although the provisions discussing this matter do not explicitly require courts to do so, the United Kingdom legislation provides basis for application of Article 11 of the Convention.

Article 25(2 and 3)

20. The following general recommendations with regard to implementation of Article 25 (2 and 3) were made in the 2018 report:

"With the aim to promote a harmonised approach to sharing of confiscated property, States Parties are recommended, if they have not yet done so, with regard to Article 25(2), to:

- *Ensure that their authorities are, to the extent permitted by domestic law and if so requested, in a position to give priority consideration to returning the confiscated property to the requesting Party in order to both compensate the victims or return such property to the legitimate owners (as required by Article 25(2)).*
- *Modify their domestic legislation to put in place appropriate legislative measures and the institutional framework as to guarantee that this provision of the Convention can be effectively applied;*
- *Introduce provisions in domestic legislation permitting priority consideration for returning the confiscated property to the requesting Party for both victim compensation and return of property to the legitimate owner;*

For the purposes of the successful implementation and application of Article 25(2), States Parties are invited to consider with regard to Article 25(2) to:

- *Include in their training programmes for the judiciary and other relevant authorities the strengthening of the institutional capacities to better understanding and applying in practice the provisions of Article 25(2 and 3) of the Convention;*
- *Maintain statistics on the effective implementation of these provisions.*

States Parties are also recommended, if they have not yet done so, with regard to Article 25(3), to:

- *Provide for the possibility to conclude agreements or arrangements on asset sharing specifically by introducing such provisions into their domestic legislation;*
- *Negotiate and conclude asset sharing agreements, in accordance with its domestic law or administrative procedures, either on a case-by-case or on a regular basis, with other States Parties, to effectively apply this Convention's provision;*

- *Extend the possibility to conclude asset-sharing agreements (which may be limited to COP States Parties which are at the same time EU Member States) to all COP States Parties*[3]*"*

21. The country specific analysis, which is provided below, aimed at assessing any progress made by the countries since 2018 in application of Article 25 (2 and 3). Findings of the previous follow-up report were taken into account, however, the main source of information were the responses to the follow-up questionnaire provided by the States Parties.

Armenia

22. In their responses to the follow-up questionnaire, the Armenian authorities referred to the legislative amendments which introduced civil forfeiture into their legal system, whereby specific provisions were established dealing with confiscated assets and their return. More specifically the "Law on Confiscation of Property of Illegal Origin" which entered into force in May 2020, in its Chapter 5, (i) establishes the legal framework for requirements concerning requests received from foreign countries, the procedure for processing of such requests as well as the return and sharing of confiscated illegal assets; and (ii) defines the responsible state body for ensuring communication with foreign states. Furthermore, Article 27 of the Law sets out the framework for cooperation with other countries regarding the confiscation of assets of illegal origin, which provides that a request from another country should be executed on the basis of reciprocity, unless its implementation is contrary to the public order of the Republic of Armenia.
    Whilst these reforms are welcome, it appears that specific requirements of Article 25 (2 and 3) were not targeted by the afore-mentioned amendments. When it concerns asset sharing, the authorities referred to the statement made for purposes of 2018 report noting that these issues are regulated (i) pursuant to international agreements ratified by the Republic of Armenia; (ii) by bilateral agreements concluded with other interested countries; (iii) or by agreements reached through diplomatic channels. No new information vis-à-vis the one from 2018 was provided. In addition, no reference was made with regard to the requirement of Article 25(2) on giving priority consideration to returning the confiscated property to the requesting Party in order to both compensate the victims or return such property to the legitimate owners. Consequently, it could be concluded that progress in applying Article 25 (2 and 3) has not been observed.

Azerbaijan

23. Further to the adoption of the thematic horizontal review on Article 25 (2 and 3) in 2018, the authorities have not adopted any legislative or other measures to implement the recommendations set forth. Consequently, no progress in applying Article 25 (2 and 3) has not been observed.

Belgium

24. Whilst the Belgium authorities, in their responses did not provide any new information on progress made in application of Article 25 (2 and 3), the general progress in EU jurisdictions achieved through implementation EU-Regulation of 2018 Directive on Asset Recovery and

[3] At the 10th plenary meeting one delegation raised concern as to whether EU Member States would be competent to conclude *ad-hoc* agreements on asset sharing with non-EU Member States. The delegation noted that the competence to sign such agreements might fall within the exclusive competence of the European Union. The Plenary clarified that the relevant general recommendation shall not be understood as a requirement of the Warsaw Convention to extend the EU asset sharing framework (to which the EU Member States are bound) to all COP States Parties. The recommendation would merely entail that States Parties which are EU Member States provide for a possibility to sign asset-sharing agreements with non-EU COP States Parties, as long as this is in line with the EU legal framework.

Confiscation, brought all States Parties which are EU member states to a satisfactory level of compliance. This contextual factor was taken into account for Belgium.

Croatia

25. Croatian authorities, in their responses to the follow-up questionnaire, informed of direct application of the requirements of the Regulation (EU) 2018/1805 of the European Parliament and of the Council of 14 November 2018 on the mutual recognition of freezing orders and confiscation orders. As already noted, the Regulation entered into the force in December 2020 and is applicable in all Member States of the Union, apart from Denmark and Ireland. Article 29 of the Regulation regulates "restitution of frozen property to the victim" and reads as follows:
    1. *Where the issuing authority or another competent authority of the issuing State has issued a decision, in accordance with its national law, to restitute frozen property to the victim, the issuing authority shall include information on that decision in the freezing certificate or communicate information on that decision to the executing authority at a later stage.*
    2. Where the executing authority has been informed of a decision to restitute frozen property to the victim as referred to in paragraph 1, it shall take the necessary measures to ensure that, where the property concerned has been frozen, that property is restituted as soon as possible to the victim, in accordance with the procedural rules of the executing State, where necessary via the issuing State, provided that:
    (a) the victim's title to the property is not contested;
    (b) the property is not required as evidence in criminal proceedings in the executing State; and
    (c) the rights of affected persons are not prejudiced.
    The executing authority shall inform the issuing authority where property is transferred directly to the victim.
    3 Where the executing authority is not satisfied that the conditions of paragraph 2 have been met, it shall consult with the issuing authority without delay and by any appropriate means in order to find a solution. If no solution can be found, the executing authority may decide not to restitute the frozen property to the victim.
    Given the requirements of Article 25(2) of the Convention and the fact that they correspond to the afore-mentioned provisions of the Regulation (pls see paragraph 8 under 'Methodology' chapter above), it could be concluded that Croatia now applies Article 25(2) with regard to EU member states only.

26. With regard to Article 25(3), the same Regulation, in its Article 30 states that *unless the confiscation order is accompanied by a decision to restitute property to the victim or to compensate the victim in accordance with paragraphs 1 to 5, or unless otherwise agreed by the Member States involved, the executing State shall dispose of the money obtained as a result of the execution of a confiscation order as follows:*
    (a) if the amount obtained from the execution of the confiscation order is equal to or less than EUR 10 000, the amount shall accrue to the executing State; or
    (b) if the amount obtained from the execution of the confiscation order is more than EUR 10 000, 50 % of the amount shall be transferred by the executing State to the issuing State.

27. Given the statement of the 2018 report that the EU Membership may suppose an adequate transposition of the EU regulations which establish comparable requirements within the EU framework with regard to Article 25(3), it can be concluded that this article of the Convention is applied by Croatia, again only with regard to EU member states.

Montenegro

28. In 2018 report Montenegrin authorities were recommended to introduce measures to implement Article 25(3). In the responses to the follow-up questionnaire, the authorities informed that, with regard to confiscated property, national legislation introduced provision that enables division of property with foreign countries and upon request. More specifically, Article 78, paragraph 3 of the Law on Seizure and Confiscation of Material Benefit Derived from Criminal Activity, prescribes that division of confiscated property with other states may be regulated through international agreement. No further details were provided whether or not such agreements have ever been signed. In conclusion, it can be stated that Montenegro has a legal basis for concluding asset sharing agreements. The country is encouraged to apply this provision in practice.

Netherlands

29. In 2018 report, Dutch authorities were recommended to introduce measures to implement Article 25(2). Consequently, their responses reflect progress made in meeting the requirements of this provision.

30. Dutch legislation provides for a special claim for value confiscation for unlawfully obtained profits or advantages, fines for misdemeanours and victim compensation. Upon request of the public prosecutor, the court may issue a separate order for special confiscation consisting of the obligation for the offender to pay a sum of money to the State [or victim] in restitution of the illicit earnings. This separate order may be used by LEAs, under supervision of the prosecutor, to confiscate the illicit earnings until the verdict has become irrevocable. The authorities also informed about the structure they have established to cooperate internationally on asset recovery matters, also for purposes of victim's compensation. The Dutch Asset Recovery Office (ARO) acts as special contact point for asset confiscation and received a total of 578 incoming and outgoing requests related to asset freezing and confiscation (data for 2020). The Asset Management Office (AMO), within the National Authority on Seizure (LBA), handles seizures made in the Netherlands pursuant to a foreign authority request or freezing order and engages with the foreign authorities to discuss the proposed approach to maximise yields. In the event of an international seizure, the requesting country will eventually transfer the execution of the underlying case to the Netherlands, after which the verdict can be enforced by the Collection Agency (CJIB) using the seized assets. In this execution phase, the competent authorities of the states involved can make agreements about asset sharing. Such arrangements would primarily focus on victim's compensation. To demonstrate how this functions in practice, Dutch authorities provided a case where victims of trafficking in human beings were compensated from the funds confiscated from the convict.

31. Further to this, it has to be noted that, as a result of direct application of the requirements of the Regulation (EU) 2018/1805 of the European Parliament and of the Council of 14 November 2018 on the mutual recognition of freezing orders and confiscation orders, application of Article 29 which concerns victims' compensation guarantee the application of Article 25(2) of the Warsaw Convention by the Netherlands vis-à-vis other EU member states. The afore-mentioned national procedures allow for application of Article 25(2) with other COP States Parties. Although the latter is not formalised in the legislation, the case law provided demonstrate that the Netherlands is in position to apply Article 25(2) with all COP States Parties.

Poland

32. Similarly to the analysis of Croatia and Netherlands, the entry into force of the EU Regulation 2018/1805 provided sufficient legal basis for Poland to apply Article 25 (2 and 3) of the Convention. This was also the main argument the authorities provided in their responses to the follow-up questionnaire. Again, it has to be noted that this concerns cooperation with other EU member states only and does not cover other COP States Parties.

San Marino

33. San Marino authorities provided a comprehensive review of the developments which are linked to Article 25 (2and 3) of the Warsaw Convention. In that regard, they emphasized that the National Strategy in the field of identification, freezing, seizure and confiscation, was adopted in September 2019. Action 4 of the strategic goal no.3, which is aimed at reducing operational problems, it is envisages "*improvements in collection of statistical data between the various Authorities regarding investigations, convictions, proceeds and cases, the value of the assets seized / confiscated and the amount of the proceeds of crime returned to victims / shared / repatriated*". Whereas this Strategy's action clearly aims at addressing COP 2018 report recommendations with regard to Article 25(2 and 3), it is not clear when and in which form this action will be materialized (e.g. through the country's legal framework reform or otherwise).

34. In parallel, and further to the findings of the ML/TF National Risk Assessment, San Marino authorities negotiated agreements for sharing of confiscated assets and/or equivalent funds to the following countries: Switzerland, Austria, Slovenia and Albania. As a result, in November 2020, a feedback from Albania was received, which is still under consideration. An Agreement between the Government of the Italian Republic and the Government of the Republic of San Marino concerning the recognition and execution of judicial decisions on seizure and confiscation, as well as the destination of confiscated assets, was signed in Rome on 26 May 2021. This agreement entered into force following the Council Decree n.164/2021. Consequently, the conclusion is that San Marino demonstrated progress in applying Article 25(3). The same cannot be stated for Article 25(2) since progress in that area is yet to be seen.

Serbia

35. In their responses to the follow-up questionnaire, the Serbian authorities reiterated their argumentation for the thematic monitoring review, referring to the Law on Confiscation of Property which Derived from Crime and the Law on Conclusion and Execution of International Agreements. These developments, however, took place before the adoption of the thematic monitoring review in 2018 and were analysed therein. In other words, according to the responses provided, it seems that no progress towards implementing recommended actions from the 2018 report was made.

North Macedonia

36. The responses provided by the North Macedonia authorities indicated that the international cooperation with regard to confiscation was further streamlined with the adoption of the Law on International Cooperation in Criminal Matters in 2021. More specifically, Article 95 of the Law states that *the monetary assets obtained by the confiscation measure enforcement on property shall be available to the Republic of North Macedonia, as follows:*

1) In case the amount following the enforcement of the confiscation measure shall be below 10.000 EUR or equal thereof, the amount shall become part of the Budget of the Republic of North Macedonia, and
2) In other cases, 50% of the amount following the enforcement of the confiscation measure, shall be transferred to the foreign state.
Clearly, the recently introduced measures set up basis for sharing confiscated assets and thus impacts country's compliance with Article 25(3).

37. With regard to specific agreements on assets sharing with other countries, the authorities reiterated their responses from the 2018 report where they stated that there are no legal provisions delegating such authority to a particular state institution. In case such agreement is to be signed, general provisions of the Law on conclusion, ratification and execution on international agreements (Official gazette 5/98) would be applied. Any such agreement would need to pass the procedure as foreseen by this law, including the ratification by the Parliament.

38. With regard to priority considerations to returning the property to victims (Article 25(2)), the authorities provided extracts from the Criminal Procedure Code which discuss victim's rights. However, it is not clear to what extent these provisions are applicable in case of foreign confiscation request and whether there is any provision in the current legislation which would allow priority consideration to be given to returning the confiscated property to the requesting Party so that it can give compensation to the victims or return such property to their legitimate owners.

Overall conclusion

39. Four years after the adoption of the Thematic Monitoring Reports on Articles 11 and 25 (2 and 3), some progress has been noted with regard to implementation of Articles 11 and 25 (2 and 3). In particular, progress in implementing of Article 11 is observed in Azerbaijan and United Kingdom, whilst other countries (Montenegro, Russian Federation, Serbia and Türkiye) have not introduced any changes into their frameworks to facilitate the application of Article 11.

40. With regard to Article 25 (2 and 3), Croatia, Belgium, Montenegro, the Netherlands and Poland made sufficient progress against the requirements of this article of the Convention. San Marino, and North Macedonia made progress with regard to application of Article 25(3) whereas the same cannot be stated for Article 25 (2) where the 2018 report recommendations are still valid for these two countries.

41. The plenary is, therefore, invited to adopt this follow up report and propose further follow up for the countries which have not demonstrated sufficient progress in applying any of the articles concerned.